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C O N F I D E N T I A L SECTION 01 OF 04 YEREVAN 000078

SIPDIS

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TAGS: [PREL](#) [PGOV](#) [KDEM](#) [COE](#) [AM](#)  
SUBJECT: LATEST PACE RESOLUTION SPURS LIMITED REFORM  
PROGRESS

REF: A. YEREVAN 26  
[1](#)B. YEREVAN 71

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Classified By: DCM Joseph Pennington, reasons 1.4 (b,d)

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SUMMARY  
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[1](#)1. (C) With its January 27 passage of Resolution 1643, the Parliamentary Assembly of the Council of Europe (PACE) elected to give Armenia more time to complete reforms highlighted in previous PACE resolutions 1609 and 1620, focusing on the way forward negotiated by rapporteurs John Prescott and Georges Colombier (reftels). The Assembly also stopped short of accusing Armenia of having "political prisoners." After months of dilatory reform progress, the GOAM now seems energized to fulfill its promises to PACE to reform the criminal code before the next PACE Monitoring Committee meeting March 30. Ruling coalition figures have suggested that the criminal code amendments will be used as a face-saving mechanism to drop charges against at least some defendants accused of the March 1, 2008 violence. Whether this will amount, de facto, to a complete amnesty, or a more incremental solution is still unclear.

[1](#)2. (C) Government officials were annoyed with PACE's continued -- as they see it -- meddling in Armenia's democratic problems, but now seem relatively happy to have a concrete, achievable and near-term plan that will get them back in PACE's good graces and put this scrutiny behind them. The opposition, meanwhile, is disappointed by what they see as only tepid criticism of Armenian authorities and a willingness to let the GOAM off the hook. However, there is a more conspiratorial view in opposition circles that sees the mild PACE criticism as "proof" that a Nagorno Karabakh peace deal is nigh, and reportedly is licking its chops in anticipation of whipping up anti-government populism over that issue. Some hope that, combined with looming economic distress and Sargsian's damaged legitimacy, the NK issue can arouse enough public protest eventually to bring down the government. END SUMMARY.

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RESOLUTION 1643  
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[1](#)3. (C) In Resolution 1643 adopted on January 27, PACE welcomed several positive steps by Armenian

authorities, such as the establishment of the multi-partisan factfinding group to inquire into the events of March 1, the decision to draft amendments to Articles 225 and 300 of the Criminal Code, and the increasing number of pardons, 28 to date, that have been granted by the President of Armenia. (NOTE: The opposition complains bitterly in public and privately that the pardons are a sham. They claim that only a few of those pardons were genuinely opposition figures -- who had been coerced into falsely admitting guilt in exchange for the pardons -- while the remainder were common criminals or even government-sponsored "agents provocateurs." They report that many of these latter, politically-unknown figures had already been freed from prison for one reason or another. END NOTE)

14. (U) PACE called upon the Armenian authorities to ensure that the fact-finding group is given full access to information from all state bodies and officials, including those that have left office or have been replaced since the March 1 events. The Resolution expressed regret that the authorities have not so far used amnesty, pardons or the dropping of charges to release all those who did not personally commit a crime. The Assembly did not use the term "political prisoners," instead pointing out that "the charges against a significant number of persons, especially those charged under Articles 225-3 and 300 of the Criminal Code and those based solely on police evidence, could have been politically motivated."

15. (C) PACE decided not yet to suspend Armenia's  
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delegation -- a largely symbolic step that would deprive the Armenian delegation of voting rights in the consultative Assembly, but would be an unusually sharp, public rebuke of the country's democracy performance. Instead, the Assembly agreed with the strategy negotiated by co-rapporteurs Prescott and Colombier to give Armenia three more months to implement agreed reforms. As foreshadowed by Ref A, and confirmed by the National Assembly speaker (Ref B), and now by Armenia's PACE delegation MPs Davit Harutunian (Republican Party) and Armen Rustamian (Dashnaksutyun), the compromise hinges on Armenia's redrafting of its Criminal Code articles 225 ("mass disorder") and 300 ("usurpation of state power") to be explicit in defining the necessary elements of the crime.

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RULING COALITION'S REACTION  
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16. (U) In public, President Serzh Sargsian's Republican Party praised PACE for not imposing sanctions against Armenia and not using the term "political prisoners." Republican Party Spokesperson Eduard Sharmazanov proclaimed this a victory and the result of the recent display of political will and reforms of the President. Armen Rustamian, ARF member of the Armenian delegation to PACE, was more cautious in his positive public assessments: "now the ball is on our side of the field and we have to present proof of the work realized before the session of PACE Monitoring Committee due in late March." He commented that it is crucial to ensure that the issue concerning Armenia is not discussed at the spring session of PACE. To do that, Armenian authorities will have to undertake consistent steps in implementation of PACE requirements.

¶7. (C) Privately, PACE Delegation leader Davit Harutunian (who chairs parliament's State and Legal Affairs Committee, which has jurisdiction over the criminal code revisions), told Ambassador and PolChief in separate conversations that he is working as fast as he can to re-draft the relevant criminal code amendments in time. Harutunian claimed credit for having proposed this compromise to National Assembly Speaker Hovik Abrahamian, who then pitched it to Prescott and Colombier (with President Sargsian's blessing). He commented that the government's initial re-draft -- written by Harutunian's despised rival, the Prosecutor General -- was terrible, and he was re-writing it completely. Harutunian said he had already spoken for several hours with the Council of Europe's designated Venice Commission representative assigned to work with Armenia on this issue.

¶8. (C) Harutunian said he intended to present the revised draft criminal code articles to the National Assembly by February 19, and hoped they would be approved on their first reading the week of February 23, during the parliament's regular session. The required second reading would follow in "mid-March," which would keep Armenia on track to implement the new procedures before the March 30 PACE monitoring committee session. Harutunian mentioned that the revisions would clear the way for authorities to drop some of the charges against the opposition defendants; he predicted that the article 300 charges would be dropped, but some vestige of the article 225 charges would likely remain to be prosecuted. He informed that under the Armenian Constitution, ex post facto changes to the criminal code are applied to pending cases if they are to the advantage of the defendant. Changes contrary to the interest of the defendant cannot be applied retroactively.

¶9. (C) Harutunian said he had spent considerable time urging the Venice Commission representative to support the need for the revised Criminal Code articles to be very explicit and leave no room for judicial interpretation -- because judges and prosecutors in Armenia have shown that they cannot be counted on to exercise discretion fairly and objectively, but will exploit any loopholes to exercise prejudice in favor of the government's preferred outcome.

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¶10. (C) PolChief also discussed the matter with Harutunian's colleague on the PACE delegation, Armen Rustamian, who chairs the Foreign Relations committee in parliament and is also the Armenian Revolutionary Federation (Dashnaksutyun) representative to the Governing Coalition. Rustamian confirmed Harutunian's timetable, and said the challenge in drafting the revisions was to find the right balance between protecting freedom of assembly, while also protecting the state from bona fide threats to the constitutional order. Rustamian predicted that the revisions would face resistance from the Prosecutor General and Justice Minister, but was confident they would nonetheless pass, because "there is no choice." He noted that his own party had been persecuted under former President Levon Ter-Petrossian (LTP), whose administration abused an earlier generation of these same criminal code provisions to declare the Dashnaks a threat to national security and the constitutional order. Rustamian commented that the Dashnaks have for months advocated within the

governing coalition for the political detainees to be freed by an amnesty, but the dominant ruling coalition partners had refused. He said the current approach amounted to a much-delayed amnesty by another name. He was confident the government would use these revisions as a face-saving tactic to free the remaining opposition detainees, after dropping all charges.

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OPPOSITION'S REACTION  
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¶11. (U) The opposition Armenian National Congress (ANC), led by former president Levon Ter-Petrossian, was far more skeptical of PACE Resolution 1634. The ANC said publicly that Armenian authorities are simply buying time with cosmetic changes, and that PACE had been taken in by this. In a statement released January 28, the opposition alliance argued that most of about 60 oppositional prisoners have been charged under different articles of the Criminal Code -- not (or not only) 225 and 300. The ANC is concerned that the issue of those prisoners remains unaddressed. (NOTE: All of the "Trial of Seven" defendants, the most prominent opposition figures jailed, are charged under articles 225 and 300, though two of them -- MPs Myasnik Malkhasian and Sasun Mikaelian -- also face charges of felony resisting arrest and illegal weapons possession. END NOTE)

¶12. (U) The ANC further criticized Prescott and Colombier for avoiding meetings with the opposition during their last trip to Yerevan. "We believe the quality of their report, and consequently the credibility of the PACE, has suffered as a result" the ANC statement read. Senior ANC policy coordinator Levon Zurabian lambasted Resolution 1634 in Strasbourg after it was adopted, saying it was based on "one-sided and false information," and accused the Assembly of being taken in by government promises. Once back in Yerevan, however, Zurabian took a more moderate tone February 3, commenting that the resolution "creates the basis for working to free the political prisoners, and sets a particular course for restoring democratic freedoms." Zurabian reiterated that he did not trust the GOAM to fulfill its commitments, implying that PACE will be able to respond again if/when that proves true.

¶13. (C) The opposition Heritage Party also complained scathingly about Resolution 1634, publicly denouncing the Assembly for "compromising its principles in Armenia and several other countries in the region, including on freedom of expression, justice, torture in prisons, and other rights." In a private meeting with poloffs January 29, Heritage Faction Leader Armen Martirosian was much more relaxed. He said the PACE decision not to suspend Armenia was fair, since Armenia is viewed in comparison with other countries that have undergone democratic reversals but had not been suspended. However, he felt the Assembly should have left the term "political prisoners" in the text of the Resolution in order to sober up the

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Armenian authorities. LTP confidante and top ANC leader Davit Shahnazarian expressed mild disappointment with Resolution 1634, but did not dwell on the issue, in a February 9 meeting with Ambassador and PolChief.

¶14. (C) The acting chairman of the Armenian

National Movement, Khachik Kokobelian, which is a leading constituent part of the ANC coalition, told PolChief privately that many in the ANC leadership had come around to the point of view that Resolution 1634 is good news. He said they interpreted the relative softness of 1634, as evidence that Armenia and Azerbaijan must be close to announcing a framework agreement on resolving the Nagorno-Karabakh conflict. He said that ANC headquarters was delighted with this prospect, because they relished the chance to whip up nationalist fervor against President Sargsian and believed this would lend renewed passion to the ANC's anti-government campaign. Kokobelian claimed that he was thoroughly disgusted by such a strategy, which he considered both highly cynical -- given LTP's record on the issue as president -- and counter to Armenia's national interests in achieving a peace settlement.

#### COMMENT

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¶15. (C) While Resolution 1634 may have backtracked a bit more than we might have liked in its language describing Armenia's continuing democratic deficit, the approach of negotiating an achievable concrete plan with the GOAM to get Armenian democracy back on track with specific improvements seems a path of constructive engagement. We hope that Rustamian is more correct than Harutunian in his assessment that all the politically-motivated defendants will be freed as a result of the revisions. It is possible that Harutunian is hedging to lower our expectations, against the risk of a failure of political will, but it is also entirely likely that the government wants to hold onto some prosecutorial leverage against the opposition detainees if it feels it can get away with it.

¶16. (C) On the opposition side, as nutty as Kokobelian's scenario may sound, we cannot rule out that it may be a correct portrayal into the opposition's thinking. That would explain the disconnect between the opposition's public and private tone on the issue. This kind of Byzantine geopolitical reasoning and tendency to attribute events to the supposed hidden agendas of the "great powers" is very much in tune with how LTP and his senior aides think. Nothing would so delight LTP, we suspect, as to topple Serzh Sargsian using the same issue and populist tactics that Sargsian (with Robert Kocharian and the late Vazgen Sargsian) used to oust Ter-Petrossian in 1998. Meanwhile, Heritage leader Armen Martirosian also predicted to PolChief that rising public anger over a cresting economic crisis, combined with Sargsian's damaged democratic legitimacy, will rally the people around the opposition banner in greater numbers than ever come springtime, and will ultimately topple the government. ANC leaders continue to claim privately that they will maintain a low public profile -- in the face of internal pressure from their supporters to be more aggressive -- so as to leave authorities plenty of maneuvering room to negotiate with Azerbaijan over Nagorno-Karabakh, without being weakened by domestic discord.

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